

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH A. FERRARA, SR., ET AL.,

Plaintiff,

-against-

RELIABLE INDUSTRIES II, INC.,

Defendant.
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Memorandum and Order

11-CV-1434 (ENV) (MDG)

VITALIANO, D.J.

Plaintiffs filed a complaint against defendant Reliable Industries II, Inc. (“Reliable”) on March 23, 2011, seeking to recover unpaid benefit contributions pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”), as amended by the Multiemployer Pension Plan Amendment Act of 1980, 29 U.S.C. §§ 1381 *et seq.* (“MPPAA”). (Docket No. 1.) Defendant failed to make any submission at all or otherwise defend this action. Plaintiff moved for default judgment on July 29, 2011. (Docket No. 6.) On September 7, 2011, the Court granted the motion and referred the matter to The Honorable Marilyn D. Go to determine the amount of the judgment, including any costs and attorney's fees associated with this action. (Docket No. 12.)

Following review of the relevant submission, Judge Go issued a Report and Recommendation (“R&R”) on September 27, 2012, recommending damages of

\$354,601.35 in unpaid contributions, prejudgment interest of \$188,868 through October 15, 2012 and at a daily rate of \$174.87 thereafter until the entry of judgment; \$188,868 in additional interest through October 15, 2012 and at a daily rate of \$174.87 thereafter until the entry of judgment; \$350 in audit fees; \$3,640.20 in attorneys' fees; and \$443.06 in costs, for a total judgment of \$736,770.61. (Docket No. 13.) Judge Go further recommended that defendant be ordered to submit to an audit of its books and records within 30 days from entry of judgment for the period commencing June 1, 2007 and that plaintiffs be permitted to petition the Court to amend the judgment to include an additional award of damages and prejudgment interest, if appropriate, following the audit. *Id.* No objections to Judge Go's R&R have been filed.

Discussion

In reviewing a report and recommendation, the court “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge.” 28 U.S.C. § 636(b) (1)(C). However, in order to accept a magistrate judge's report and recommendation where no timely objection has been made, the “court need only satisfy itself that there is no clear error on the face of the record.” *Urena v. New York*, 160 F.Supp.2d 606, 609–10 (S.D.N.Y.2001) (quoting *Nelson v. Smith*, 618 F.Supp. 1186, 1189 (S.D.N.Y.1985)).

After careful review of all the evidence in the record, the Court finds Judge Go's R&R to be correct, comprehensive, well-reasoned, and free of any clear error.

The Court, therefore, adopts the R&R in its entirety as the opinion of the Court. Accordingly, for the reasons stated in the R&R, judgment shall enter against defendants in the amount of \$736,770.61, which includes \$354,601.35 in unpaid contributions, prejudgment interest of \$188,868 through October 15, 2012, plus additional prejudgment interest at a daily rate of \$174.87 thereafter until the entry of judgment; \$188,868 in additional interest through October 15, 2012, plus additional prejudgment interest at a daily rate of \$174.87 thereafter until the entry of judgment; \$350 in audit fees; \$3,640.20 in attorneys' fees; and \$443.06 in costs.

The Clerk is directed to enter judgment and to close this case.

SO ORDERED.

**Dated: Brooklyn, New York
January 9, 2013**

s/ ENV


ERIC N. VITALIANO
United States District Judge